

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

September 22, 2004

IN RE:

UNIVERSAL SERVICE FOR RURAL
AREAS – THE GENERIC DOCKET

)
)
)
)

DOCKET NO.
00-00523

ORDER GRANTING MOTIONS

This matter came before Director Pat Miller, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority (the “TRA” or “Authority”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on May 24, 2004 for consideration of: (1) *BellSouth Telecommunications Inc 's Motion for Reconsideration or, in the Alternative, Clarification of the Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of the Pre-Hearing Officer Filed on November 8, 2000* (“*Motion for Reconsideration*”) filed on July 15, 2002;¹ (2) *BellSouth Telecommunications, Inc 's Motion for Reconsideration of Hearing Officer's Order Dated May 6, 2004* filed on May 17, 2004; and (3) *CMRS Providers' Petition for Reconsideration* filed on May 17, 2004.

Background

In December 2000, BellSouth Telecommunications, Inc. (“BellSouth”) was instructed by the Hearing Officer to keep in place the current toll settlement arrangements with the Rural Local Exchange Carriers (“ICOs”) until the arrangements are terminated, replaced, or modified by the TRA.² In a subsequent order issued on June 28, 2002, the Hearing Officer found that the toll

¹ BellSouth filed a substitute version of its motion on July 25, 2002

² See *Initial Order of Hearing Officer For the Purpose of Addressing the Authority's Jurisdiction Over Intralata Toll Settlement Agreements Between BellSouth Telecommunications, Inc and Independent Incumbent Local Exchange Carriers*, p 12 (December 29, 2000) (“*First Initial Order*”)

settlement arrangements are appropriately considered within this Docket.³ On July 25, 2002, BellSouth filed its *Motion for Reconsideration* asking for clarification or reconsideration of the Hearing Officer's June 28, 2002 decision. At the July 23, 2002 Authority Conference, the Panel decided to treat the *Motion for Reconsideration* as a petition for appeal,⁴ which has been held in abeyance since that time pursuant to the wishes of the Parties.

On April 2, 2003, BellSouth filed a letter stating that it would discontinue making payments to the ICOs after April 2003 for Commercial Mobile Radio Services ("CMRS") originated traffic transiting BellSouth's network. On April 3, 2003, the ICOs filed a *Petition for Emergency Relief and Request for Standstill Order* (the "*Petition*") asking that BellSouth be directed to maintain the existing toll settlement arrangements while a new compensation mechanism is negotiated. The Hearing Officer addressed the *Petition* in the *Order Granting in Part the Petition for Emergency Relief and Request for Standstill Order* issued on May 6, 2004. On May 17, 2004, BellSouth and the CMRS providers⁵ filed motions for reconsideration of this order. On May 20, 2004, BellSouth filed a letter expressing its intent to seek an appeal of the May 6, 2004 order to the Panel rather than reconsideration of the order by the Hearing Officer.

The May 24, 2004 Authority Conference

At the May 24, 2004 Authority Conference, attorneys were present and participated on behalf of BellSouth, the CMRS providers, the ICOs, and the Consumer Advocate and Protection Division of the Office of the Tennessee Attorney General ("CAPD"). BellSouth again clarified that its most recent motion for reconsideration was intended to seek an appeal before the Panel of the Hearing Officer's May 6th order. BellSouth also suggested that the issues addressed in this order are sufficiently related to the issues addressed in its previously-filed *Motion for Reconsideration* such

³ See *Initial Order of Hearing Officer*, p. 4 (June 28, 2002).

⁴ See *Order Accepting Petition for Appeal and Appointing Hearing Officer*, p. 3 (September 17, 2002).

⁵ The CMRS providers joining in the filings are Cellco Partnership d/b/a Verizon Wireless, BellSouth Mobility LLC, BellSouth Personal Communications, LLC, and Chattanooga MSA Limited Partnership collectively d/b/a Cingular Wireless, AT&T Wireless PCS, LLC d/b/a AT&T Wireless, T-Mobile USA, Inc.; and Sprint Spectrum L.P. d/b/a Sprint PCS.

that both of its motions for reconsideration should be simultaneously considered by the Panel at a later date. The CMRS providers declared that reconsideration by the Hearing Officer was the original intent of their motion, but they were willing to acquiesce to BellSouth's request that the matter be addressed by the Panel. The ICOs and the CAPD were amenable to either option, requesting only that sufficient time be allowed to respond to the motions.

The Directors discussed the procedural irregularities contained in BellSouth's request that the Hearing Officer's May 6th order be reviewed by the Panel in as much as the order is not an initial order as contemplated by Tenn Code Ann. § 4-5-315(b) and BellSouth did not seek permission from the Hearing Officer for interlocutory review as required under TRA Rule 1220-1-2-.06. Notwithstanding these deficiencies, the Directors unanimously agreed to review the May 6, 2004 decision of the Hearing Officer and to defer action on the *Motion for Reconsideration*. A majority of the Panel voted to grant the motions for reconsideration filed on May 17, 2004 pursuant to Tenn. Code Ann. § 4-5-317 for the purpose of setting further proceedings⁶ and to stay the May 6th order until after the Panel has had an opportunity to review the merits of the motions for reconsideration.⁷ The Panel unanimously ordered the Parties to file briefs on the merits of the motions for reconsideration no later than 2:00 p.m. on Monday, June 7, 2004 and scheduled oral arguments to be heard on all the motions for reconsideration at the June 21, 2004 Authority Conference

IT IS THEREFORE ORDERED THAT:

1. The Hearing Officer's May 6, 2004 *Order Granting In Part the Petition for Emergency Relief and Request for Standstill Order by the Tennessee Rural Independent Coalition* will be reviewed by the Panel.

⁶ Director Jones did not vote in favor of granting the motions for reconsideration pursuant to Tenn Code Ann § 4-5-317. Instead, it was his opinion that § 4-5-317 is not applicable because that statute applies to an initial order and the May 6th order is not an initial order. It was Director Jones's opinion that the Panel should treat the motion as an interlocutory appeal perfected pursuant to Authority Rule 1220-1-2-.06 and waive the requirement of 1220-1-2-.06(6) that the appealing party seek permission from the Hearing Officer to appeal an order disposing of a preliminary matter.

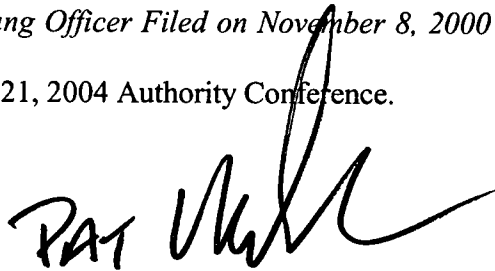
⁷ Director Jones disagreed with the Majority's decision to stay the effectiveness of the May 6th order because no party had filed a petition seeking a stay.

2. *BellSouth Telecommunications, Inc.'s Motion for Reconsideration of Hearing Officer's Order Dated May 6, 2004* filed on May 17, 2004 and *CMRS Providers' Petition for Reconsideration* filed on May 17, 2004 are granted for the purpose of setting further proceedings.

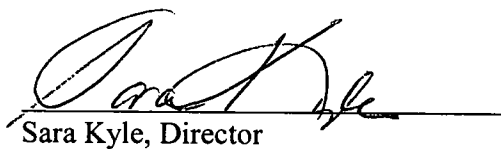
3. Briefs on the merits of *BellSouth Telecommunications, Inc.'s Motion for Reconsideration of Hearing Officer's Order Dated May 6, 2004* filed on May 17, 2004 and *CMRS Providers' Petition for Reconsideration* filed on May 17, 2004 shall be filed with the TRA no later than **2:00 p.m. on Monday, June 7, 2004.**

4. The Hearing Officer's May 6, 2004 *Order Granting In Part the Petition for Emergency Relief and Request for Standstill Order by the Tennessee Rural Independent Coalition* is stayed until further order of the Panel.

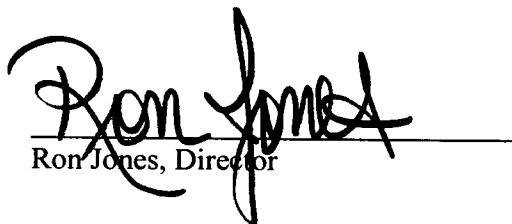
5. Oral Argument on all motions for reconsideration, including *Substitute Version of BellSouth Telecommunications Inc.'s Motion for Reconsideration or, in the Alternative, Clarification of the Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of the Pre-Hearing Officer Filed on November 8, 2000* filed on July 25, 2002, shall be heard by the Panel at the June 21, 2004 Authority Conference.



Pat Miller, Director



Sara Kyle, Director



Ron Jones, Director